

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
FEBRUARY 23, 2004
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:30 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Michael Teruya, Planning Manager; Thomas Gorham, Senior Planning Consultant; Scott Albright, Senior Planner; Paul Adams, Parks and Recreation Director; Lt. Gloria Gressman, Sheriff's Department; and Lisa Pope, City Clerk.

FLAG SALUTE

Melissa Caridad led the Pledge of Allegiance.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

None.

City Attorney Hogin reported that the Council met in closed session at 5:30 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753, BS080758, BS080791
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)
Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355 (on appeal)

4. City of Malibu v. California Coastal Commission (AB988 / LCP)
Los Angeles County Superior Court Case No. SC074641
Related cases (city named as a party in interest):
 - a. Rick Appel v. California Coastal Commission
Los Angeles County Superior Court Case No. SC074658
 - b. Ralph Herzig v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011382
 - c. Primrose Company v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011386
 - d. Riverview Farm Associates v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011383
 - e. Brian Sweeney v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011387
 - f. Trancas-PCH v. California Coastal Commission
Los Angeles County Superior Court Case No. SC074640
 - g. Tuna Ridge v. California Coastal Commission
Los Angeles County Superior Court Case No. SC011381
 - h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
5. Colony Beach Preservation Association v. California Coastal Commission
Los Angeles County Superior Court Case No. BS083683
6. Daniel & Laure Stern v. City of Malibu (Sprint PCS)
Los Angeles County Superior Court Case No. BS087741
7. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Amicus)
8. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
9. Sierra Club v. City of Malibu (Forge Lodge)
Los Angeles County Superior Court Case No. BS083573
10. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
11. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
12. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585 (on appeal)
13. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu
Los Angeles County Superior Court Case No. BS072794 (on appeal)
14. Trancas Property Owners Association v. City of Malibu
Los Angeles County Superior Court Case No. BS084112
15. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. CV00-10255-FMC(JWJx)
16. Visher v. City of Malibu
Los Angeles County Superior Court Case No. SC078703

Real Estate negotiation matters pursuant to Government Code Section 54956.8:

17. Property APN: 4458-018-002, 018, 019
City Negotiator: City Manager Lichtig or designee
Property Negotiator: Roy E. Crummer
Under Negotiation: Price and terms of payment

City Attorney Hogin reported that the Council discussed some but not all items listed on the Closed Session Agenda due to limited time and took no reportable action.

APPROVAL OF AGENDA

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to approve the Agenda. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was properly posted on February 13, 2004.

ITEM 1 CEREMONIAL/PRESENTATIONS

- A. Recognition of Melissa Caridad as a recipient of a Teen Urban Hero award from People and Park

Mayor Kearsley presented a proclamation to Melissa Caridad as a recipient of a Teen Urban Hero award from People and Parks.

Ms. Caridad thanked the Council for the award.

- B. Proclamation Recognizing the Artific Tree's 30th Anniversary

Mayor Kearsley presented a proclamation to Honey Coatsworth recognizing the Artific Tree's 30th Anniversary.

Ms. Coatsworth thanked the Council for recognizing the Artific Tree.

ITEM 2A PUBLIC COMMENTS

John Mazza addressed the Council regarding the basement ordinance and encouraged the Council to take action prior to the election.

Joseph Vana requested the Council continue to retain Bing Yen for the geology work related to the Special Landslide district in his neighborhood. He requested a formal item be placed on the Council agenda.

Henrietta L. Knapp thanked the Council for their hard work. She discussed the Big Rock slide district.

ITEM 2B COUNCIL COMMENTS

Mayor Pro Tem Barovsky discussed the recent meeting of the Administration and Finance Subcommittee at which Ray Singer's proposed City logo and current City contracts were discussed.

In response to Councilmember Stern, City Manager Lichtig explained that the Council directed staff to re-bid the geology work currently provided by Bing Yen. She stated staff was in the process of writing the scope of work and putting the matter out to bid.

Councilmember House asked who owned the reports that Bing Yen has collected over the years. City Manager Lichtig stated they were City documents. Councilmember House explained that re-bidding was a best management practice. City Manager Lichtig explained that staff would provide its recommendation on the best bidder.

Mayor Kearsley discussed the bidding process for contractors. City Manager Lichtig stated a bidder's conference would be conducted to explain the scope of work. Mayor Kearsley stated the City has a fiduciary responsibility to periodically review contracts and the scope of work.

Councilmember Stern congratulated Honey Coatsworth and Melissa Caridad on their proclamations.

Mayor Pro Tem Barovsky echoed Councilmember Stern's congratulations and indicated that the volunteer spirit was alive and well.

Councilmember Jennings congratulated Honey Coatsworth and Melissa Caridad. He addressed Mr. Mazza's comments regarding the basement ordinance. He discussed the slide in the Big Rock area and indicated there was no intention of doing anything that would allow any disruption to the area. He discussed the recent Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) meeting at which story poles and trails issues were discussed.

Mayor Pro Tem Barovsky requested Mr. Mazza provide a list of recently approved houses that were affected by the existing basement provisions.

Councilmember House congratulated Honey Coatsworth and Melissa Caridad. She discussed the Big Rock slide area and thanked Mr. Vana for his care and attention to the matter.

In response to Mr. Vana, City Manager Lichtig explained the bidding process for capital improvement projects and professional services contracts.

Councilmember House discussed library funding and explained that the City had submitted a letter indicating it contributed more money than the cost of services it received.

Mayor Kearsley announced that the County of Los Angeles was looking for additional poll workers for the March 2, 2004 election.

ITEM 3 CONSENT CALENDAR

Item 3.B.3. was pulled by the public.

The Consent Calendar consisted of the following items:

A. Previously Discussed Items

1. Second Reading and Adoption of Ordinance No. 241, an ordinance of the City of Malibu adopting Zoning Map Amendment 02-002 amending the Zoning Map from RR-20 (Rural Residential – One Unit Per Twenty Acres) to RR-5 (Rural Residential - One Unit Per Five Acres) on 68 Acres of Land Known as Assessor Parcel Numbers 4459-003-007 and 008, Generally Located on the North Side of Latigo Canyon Road, approximately 4,000 Feet from the Latigo Canyon Road / Pacific Coast Highway Intersection (Rubens Family Trust)
Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 241.

B. New Items

1. Waive further reading
Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.
2. Approve Warrants
Staff recommendation: Allow and approve warrant demand numbers 24058 through 24191 listed on the register from the

General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 303 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$790,478.89. ADP payroll voucher numbers 8204377 – 8204395 were issued in the amount of \$104,547.03.

4. Resolution Supporting Double Fine Zone on Pacific Coast Highway as Proposed in Assembly Bill 1009

Staff recommendation: Adopt Resolution No. 04-12 reaffirming support for Assembly Bill 1009 (introduced by Assembly Member Fran Pavley and co-sponsored by Senator Sheila Kuehl), which establishes a double fine zone on Pacific Coast Highway for a period of two years.

5. Opposition to Closure or Relocation of the Los Angeles Air Force Base

Staff recommendation: Adopt Resolution No. 04-13, opposing the closure or relocation of the Los Angeles Air Force Base.

6. Request for Proposals for Audit Services

Staff recommendation: Approve Request for Proposal (RFP) for Audit Services.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to approve the Consent Calendar with the exception of Item No. 3.B.3. The motion carried unanimously.

The following item was pulled from the Consent Calendar for individual consideration.

3.B.3. Resolution Revising Membership Guidelines for the Native American Cultural Resources Advisory Committee and Appointment of Members

Staff recommendation: 1) Adopt Resolution No. 04-10 revising membership guidelines for the Native American Cultural Resources Advisory Committee for the City of Malibu and repealing Resolution No. 04-07; and 2) Appoint members from received applications.

Judith Rimple deferred her time to Harold Greene

Francine Greene deferred her time to Harold Greene.

Carl Rimple deferred his time to Harold Greene.

Cameron Losey deferred his time to Harold Greene.

Jeannie Yamamoto deferred her time to Harold Greene.

Harold Greene addressed the Council regarding the number of members on the committee. He, on behalf of the committee, requested that the committee be made up of 15 members and suggested staff on its own or with the assistance of the committee determine the members. He stated 8 of the 11 presently active committee members agreed with having only 15 members.

Mayor Pro Tem Barovsky asked if the committee could be 15 members, with 2 alternates. City Attorney Hogin stated there was no legal impediment to doing it that way. She stated she would not mind staff making a recommendation on who could be on the committee.

Councilmember House suggested asking Mr. Greene if he would agree with the two alternates being drawn out of a hat.

Mr. Greene stated most members attended all meetings. He stated he did not object to having alternates as long as staff and the committee could provide input on who the alternates were.

Mayor Pro Tem Barovsky expressed her excitement with people wanting to get involved in the process.

Councilmember House stated she felt a 17 member committee was doable. She agreed with selecting 2 alternates from a hat if the membership was reduced to 15.

Mayor Kearsley explained that the committee was requesting that it be allowed to make recommendations on the members. He discussed the functions of the committee.

Mayor Pro Tem Barovsky asked if the Native American Cultural Resources Advisory Committee (NACRAC) had ever not had a quorum. Parks and Recreation Director Adams stated the meetings were usually well attended.

Mayor Kearsley stated the Council should be inclusive rather than exclusive.

Councilmember Jennings questioned whether the alternate status would be rotated.

City Attorney Hogin provided suggested language for the resolution regarding membership.

MOTION Mayor Pro Tem Barovsky moved and Mayor Kearsley seconded a motion to adopt Resolution No. 04-10 with an amendment to Section 2.B. to read as follows: "The Native American Cultural Resources Advisory Committee will consist of 15 regular members with 2 at-large alternates all of whom shall be residents, property owners, currently employed within Malibu, Native Americans, cultural resources professionals or individuals with significant education or experience in Native American issues. The alternates shall have voting rights on the committee if any regular member is not present until such time as the regular member arrives. The at-large alternates shall be designated Alternate No. 1 and Alternate No. 2. In the event of only one absence, Alternate No. 1 would assume voting status." The motion carried unanimously.

CONSENSUS

By consensus, the Council referred the appointments to staff and directed staff to contact applicants to see if there are volunteers to serve as alternates.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

- A.** ZONING TEXT AMENDMENT NO. 02-001 / NEGATIVE DECLARATION No. 02-001 – An amendment to Title 17 (Zoning) of the Malibu Municipal Code (M.M.C.), Chapter 17.02 (Introductory Provisions and Definitions), Chapter 17.40 (Property Development and Design Standards), Chapter 17.62 (Development Permits), Chapter 17.72 (Variances and Modifications) and other sections as applicable to clarify the procedures and requirements for the processing of development permits, to amend the findings for Site Plan Review, and to refine definitions and regulations related to protection of primary view.

Staff recommendation: Adopt Resolution No. 04-11 (Attachment 1) adopting Negative Declaration No. 02-001 for an amendment to Title 17 (Zoning) of the Malibu Municipal Code, to clarify the procedures and requirements for the processing of development permits, to amend the findings for Site Plan Review, and to refine definitions and regulations related to protection of primary view; 2) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 261 (Attachment 2) approving Zoning Text Amendment No. 02-001 regarding an amendment to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.02 (Introductory Provisions and Definitions), Chapter 17.40 (Property

Development and Design Standards), Chapter 17.62 (Development Permits), Chapter 17.72 (Variances and Modifications) and other sections as applicable; and 3) direct staff to schedule second reading and adoption of Ordinance No. 261 on March 8, 2004.

Senior Planning Consultant Gorham presented the staff report.

Councilmember House questioned the use of “ground floor” in the primary view section. Senior Planning Consultant Gorham explained that “ground floor” was currently used and he explained the process of determining primary view.

City Attorney Hogin presented an additional staff report regarding the appeal process.

Councilmember Stern asked if the stringline rule was being changed. Senior Planning Consultant Gorham explained that the process for stringline modifications remained the same, but the process was being moved from minor modification to site plan review.

Councilmember Jennings discussed the stringline modification process and indicated that the Council had previously determined that all stringline modifications should be subject to Planning Commission review. Senior Planning Consultant Gorham stated the Council had previously determined to bring back a zone text amendment at a future time.

City Attorney Hogin explained that stringline modifications were appealable and determinations were noticed.

Councilmember Jennings stated his memory was that all stringline determinations, not just modifications, would be subject to appeal.

Councilmember House agreed that the Council determined to have all stringline determinations subject to appeal.

Senior Planning Consultant Gorham explained that determinations would be posted on the web, with an administrative review process.

Councilmember Jennings stated all stringline determinations should be subject to the notice and appeal process.

Councilmember Stern questioned whether seawalls and bulkheads were contained under administrative plan review. He stated it was critical for neighbors to know about seawalls and bulkheads.

CONSENSUS

By consensus the Council directed staff to: move seawalls and bulkheads out of administrative plan review; make stringline determinations and modifications subject to notice, decided by Planning Manager and subject to appeal to the Planning Commission.

Councilmember Jennings discussed remedial grading and proposed limitations.

Ryan Embree discussed the noticing and appeal processes. He discussed the time of Planning Manager's hearings and suggested alternate hearing times be provided.

Steve Uhring deferred his time to John Mazza.

Charleen Kabrin deferred her time to John Mazza.

Candace Brown deferred her time to John Mazza.

Jefferson Wagner deferred his time to John Mazza.

John Mazza discussed the base floor utilized for primary view determinations. He discussed the appeal process and stated it was not possible to address all concerns up front. He suggested an absolute expiration date of seven years be established. He addressed the Council regarding appeals and primary view.

Norm Haynie suggested alternatives to primary view determination. He questioned where the exception for beach homes was regarding primary view. He presented a diagram demonstrating primary views. He discussed extension of retaining walls that could not be seen. He suggested exceptions for Fire Department required walls.

Councilmember Stern discussed the height of retaining walls and explained that walls that were part of the house were not included.

Councilmember Jennings discussed the height issue regarding beachfront properties. Senior Planning Consultant Gorham indicated that language could be added indicating an exception for

beachfront lots. Councilmember Jennings agreed with Mr. Mazza's comment regarding natural or finished grade for primary view. He discussed the appeal process and the difficulty with allowing every issue to be appealable. He discussed the conditions under which a property owner could build a house with only technical review and without going in front of a political body. He suggested a process where, as an administrative review, City staff would have the opportunity to hear appeals of the Planning Manager's decisions and then stop the process.

Mayor Pro Tem Barovsky explained that it was a way to encourage people to build without asking for extra height, width and square footage. She stated that people should be entitled to know what the laws allow. She stated she disagreed with ignoring the due process law. She agreed that there should be a finite period for extensions, as long as litigation is not counted towards part of the time.

Councilmember Jennings explained the proposed rule for extensions.

Councilmember Stern stated he did not mind a limit, so long as there was some sort of an extension provision. He asked if someone came before the Council or Planning Commission and later decided to build a smaller building than what was approved, would they have to go back because of the change. City Attorney Hogin stated it would be allowed, generally speaking, because it would be in substantial conformance. Councilmember Stern stated it was necessary to provide an envelope of allowable development standards.

In response to Councilmember House, Mr. Haynie suggested the primary view corridor be from the ground floor or primary living room area, whichever has the superior view corridor.

Councilmember House suggested placing a distance on deck length, as presented by Mr. Haynie.

Councilmember Jennings agreed with Mr. Mazza that there should be more flexibility in appeal filing. He suggested that an appeal could be filed within 10 days and then have an additional week or two weeks within which to state grounds for the appeal.

CONSENSUS

By consensus, the Council agreed to do eliminate the process of the Planning Commission or the City Council appealing a decision to itself.

The Council discussed ground floor and primary view determinations.

Mr. Haynie discussed “downhill houses.”

Councilmember Jennings suggested retaining the existing provisions.

Councilmember House indicated support for Mr. Haynie’s suggestion of utilizing superior view.

CONSENSUS

By consensus, the Council agreed to use Mr. Haynie’s language regarding “superior” view, in consultation with the property owner and with the City having the final say.

The Council discussed determination of primary views from decks.

CONSENSUS

By consensus, the Council agreed to allow view to be determined from a deck or patio abutting the house up to 10 feet from the structure.

Mayor Kearsley agreed with allowing an extension for stating the grounds of appeals and indicated that the Planning Commission or City Council could restrict it to just the issues on appeal.

CONSENSUS

By consensus, the Council agreed:

1. To add language to the stringline modification section that stringline determinations will be noticed in the same manner that modifications are noticed and that they will be appealable.
2. That bulkheads and seawalls will be moved to the site plan review.
3. To insert language under primary view regarding 18 feet or natural or finish grade, whichever results in lower height.
4. To except beachfront properties from site plan review over 18 feet in height.

5. That there will be a total of seven years, including extensions, with the exception of litigation.
6. To use Norm Haynie's language regarding primary view.
7. To add language to deck or patio section, "abutting the house and within 10 feet."
8. That the appeal process will be 10 days to file the appeal and an additional 10 days to state grounds for the appeal.

ACCLAMATION

By acclamation, the Council continued the public hearing open to the second meeting in March.

ITEM 5 OLD BUSINESS

None.

ITEM 6. NEW BUSINESS

None.

ITEM 7. COUNCIL ITEMS

- A. Council Appointments to City Commissions
Staff recommendation: Appoint new Commission member to the Mobilehome Park Rent Stabilization Commission.

Councilmember Stern appointed Ryan Embree to the Mobilehome Park Rent Stabilization Commission.

ADJOURN At 8:43 p.m., Councilmember House moved, and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of
the City of Malibu on April 12, 2004.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)